IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 6361 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BHIKHABHAI AMBALAL PATEL & 1 - Appellant(s)
Versus
JAYASWAL GAJUBHAI BATUKLAL & 2 - Defendant(s)

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Appearance :
MR AMIT C NANAVATI for Appellant(s) : 1 - 2.
None for Defendant(s) : 1 - 2.
MS MEGHA JANI for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 26/02/2007

ORAL JUDGMENT

The parents of unfortunate child, namely Asmita, who died in a vehicular accident which occurred on 24/3/1991 at about 2.00 pm, have approached this Court for seeking enhancement of compensation awarded to

them by the Motor Accident Claims Tribunal [Aux.], Mehsana dated 15/6/1999 in M.A.C. Petition No. 662 of 1991. Against the claim of Rs.1 lac, the Tribunal has awarded Rs.36,500/- with running interest @ 12% pa from the date of application till realization and the proportionate costs.

2. On the fateful day, a Fiat Car bearing Registration No. GUD 3738 knocked down the deceased near the sign board of village Mulsan around 2.00 pm. As a result of the same, she died instantaneously. She was aged about 6 years. Due to her accidental death, the parents i.e., the appellants preferred petition under the provisions of the Motor Vehicles Act, 1988 [hereinafter referred to as 'the Act'] for obtaining compensation of Rs.1 lac. It was alleged that the accident occurred due to rashness and negligence of the driver of the Fiat Car, namely respondent no. 1. The vehicle was owned by respondent no. 2 and it was insured with respondent no. 3. Respondents no. 1 and 2 did not resist the claim. However, respondent no. 3 – insurance company contested it by filing written statement at Exh. 25. In the written statement the averments made in the petition were denied and it was prayed that the claim be dismissed.

2.1. The parties led evidence before the Tribunal on the basis of the material produced before it, the Tribunal held that the accident occurred solely due to the negligence of respondent no.1. It also held that the deceased died due to the negligent and rash act of respondent no. 1. The Tribunal assessed the

compensation at Rs.36,500/- and directed the respondents to pay jointly and severally the amount. Being dissatisfied with the quantum of compensation, the appellants have approached this Court.

3. I have heard Mr. Amit C Nanavati, learned advocate for the appellants and Ms. Megha Jani, learned advocate for respondent no. 3. Respondents no. 1 and 2 though served, have not appeared. It is submitted by Mr. Nanavati that the Tribunal has committed error in taking the notional income at Rs.250/- per month. He has further submitted that the multiplier of 12 applied by the Tribunal is on lower side. He has further submitted that the Tribunal has committed error in not awarding any compensation under the heads of conventional amount, loss to estate and funeral expenses.

3.1. As against that, Ms. Jani has supported the judgment and has submitted that the compensation awarded by the Tribunal is just and proper.

4. So far as the question of negligence is concerned, I have perused the discussion in the judgment. It appears that the Tribunal has rightly held respondent no. 1 responsible for causing the accident. The material on record clearly shows that due to his negligence and rashness, the accident occurred and the child died. I am, therefore, in full agreement with the conclusion of the Tribunal with regard to negligence of respondent no. 1.

4.1. So far as the quantum of compensation is concerned, per se, it is on lower side. The Tribunal ought to have considered the notional income of the child at Rs.600/- per month and ought to have determined the economic loss on the basis of the same. Further the Tribunal has wrongly applied the multiplier of 12. In the facts and circumstances of the case, the multiplier ought to have been at 16. The monthly income could be assessed at Rs.400/- after 1/3rd deduction towards personal expenses and the annual loss of income comes to Rs.4,800/-. Applying multiplier of 16, the loss of income would be Rs.76,800/-. Thus, under this head, the appellants would be entitled to receive Rs.76,800/-. The Tribunal has already awarded a sum of Rs.36,000/-. Hence, additional amount of Rs.40,800/- is awarded under this head. Admittedly no amount was awarded under the heads of conventional amount and loss to estate. On that count also Rs.10,000/- each can be awarded and it is hereby awarded. So far as the funeral charges are concerned, the appellants have claimed Rs.5,000/-. I do not see any reason to curtail the amount. Thus, the appellants are entitled to have additional compensation of Rs.65,800/-. The total compensation comes to Rs.1,01,800/-. Since the claim is restricted to Rs.1 lac, it is fully allowed i.e., to the extent of of Rs.1 lac together with interest @ 12% p a on additional amount and proportionate costs. The appeal is allowed.

[Akshay H Mehta, J.]

* Pansala.